

BEFORE THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

Application of Back Alley, LLC and The Ellsworth T. Simpson Trust
1063 R Wisconsin Avenue, NW Square 1199, Lot 48

PRELIMINARY STATEMENT OF COMPLIANCE WITH THE BURDEN OF PROOF
AND STATEMENT OF EXISTING AND INTENDED USE

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I. Background

The Property is located at an address known as 1063 Rear Wisconsin Avenue, NW (Square 1199, Lot 48). The Property is improved with two buildings which have existed since well before 1958 (collectively, the “**Buildings**”). The first building (referred to herein as “**Building A**” or the “**Carriage House**”) fronts on the alley between M Street and the C & O Canal, and abuts the Blues Alley Jazz Club. The second building on the Property (referred to herein as “**Building B**”) borders the canal to the south and serves primarily as the rear section of Philomena’s restaurant, which fronts on Wisconsin Avenue. The Carriage House has not been used for many years and, in fact, does not currently have utilities serving the building. The Applicant intends to subdivide the Property, as shown on the attached plat, and to request relief so that the Carriage House may be brought back to productive use as nonresidential space.

The Property is located in the W-1 zone district, which provides for a maximum floor area ratio (“**FAR**”) of 2.5, only 1.0 of which may be used for nonresidential purposes. The land area of the Property is 8,266 square feet. The gross floor area of Building A, currently 100% vacant, is 5,488 square feet. The gross floor area of Building B is 5,582 square feet, all currently utilized for nonresidential use. The current total FAR for the Property is 1.33, consisting of the unused Building A (.66 FAR) and the fully utilized nonresidential Building B (.68 FAR). The use of Building A for nonresidential use would increase the nonresidential FAR to 1.33, or .33 over the maximum permitted nonresidential FAR of 1.0.

The Applicant intends to subdivide the Property into two record lots and convey to an unrelated party a portion of the Property consisting of Building A and the land underneath Building A (“**New Lot A**”). The Applicant will retain Building B and the remainder of the Property (“**New Lot B**”). Both newly subdivided record lots will have frontage on the alley, and the transaction will include easements that provide for access through the open areas of the Property for the benefit of both property owners. The resulting FAR for New Lot B will be 1.16, or .16 over the maximum permitted FAR of 1.0. The resulting FAR for New Lot A will be 1.58, all of which the Applicant intends to be used for any use permitted in the W-0 zone.

So this Application requests relief from the maximum permitted nonresidential FAR requirements of 11 DCMR § 931.2, which limit the maximum FAR in the W-1 zone to 1.0 and

BOARD OF ZONING ADJUSTMENT
District of Columbia
CASE NO. 18610
EXHIBIT NO. 5

Board of Zoning Adjustment
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CASE NO.18610
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the maximum overall FAR to 2.5. This Application is not proposing any additions to the Buildings, and merely wishes to use 100% of the existing space for any permitted nonresidential use.

II. Burden of Proof

In order to receive variance relief, the applicant must satisfy a three-part test which requires: (1) a demonstration that the property is affected by some exceptional situation or condition; (2) without the requested variance relief, the strict application of the Zoning Regulations would result in some practical difficulty upon the property owner; and (3) the requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan.

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A. Property Is Affected by an Exceptional Situation or Condition

The Buildings and the Property have existed as they are today since well before 1958, and to the Applicant's knowledge have never been used for residential purposes. Building A has been vacant and unutilized for many years, and has previously been used as a warehouse and a carriage house. There are no utilities serving Building A. Building B, while sharing a record lot with the unattached Building A (itself a nonconforming situation) is actually connected to, and part of, Philomena's restaurant, which fronts on Wisconsin Avenue. Neither Building A or B is configured for residential use and a conversion to residential use would not be feasible for either Building.

B. Strict Application of the Zoning Regulations Would Result in Practical Difficulty upon the Property Owner

Because of the conditions noted above, including the location, the configuration (external and internal), and the condition of the Buildings, residential use of these Buildings is impossible. Because of the FAR restriction for nonresidential use of 1.0, without the requested relief, the subdivision cannot be completed and Building A would remain vacant.

C. Relief Can Be Granted Without Substantial Detriment to the Public Good or Substantial Impairment of the Zone Plan

The requested relief can be granted without substantial detriment to the public good or substantial impairment of the zone plan. The Applicant is only proposing to use the existing space. Granting relief would bring Building A back to productive use; a use which will be compatible with surrounding uses, as it will be used only for a matter-of-right permitted use in the W-1 zone. The total FAR utilized for the Property will effectively be 1.33, which is well below the overall maximum permitted FAR of 2.5.